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May 16, 2022,

VIA CM/ECF

Hon. Jeremiah J. McCarthy
United States Magistrate Judge
Western District of New York
Robert H. Jackson United States Courthouse
2 Niagara Square
Buffalo, New York 14202

Re: Moog, Inc. v. Skyrise, Inc. et al., W.D.N.Y. Case No. 22-cv-187

Dear Judge McCarthy:

Winget, Spadafora & Schwartzberg, LLP represents defendants Robert Alin Pilkington (“Pilkington”) and Misook Kim (“Kim”) in the above-referenced matter. We write this letter pursuant to the Court’s instruction that Pilkington and Kim state whether they will continue to pursue their Fed. R. Civ. P. 12(b)(6) motion in light of the fact that defendant Skyrise, Inc. (“Skyrise”) withdrew its motion to dismiss. *See* Dkt No. 101.

By way of brief background, Pilkington and Kim joined with Skyrise’s arguments to dismiss Plaintiff’s sixth (civil conspiracy); ninth (tortious interference with prospective economic advantage); and tenth (unjust enrichment) causes of action. Generally, the arguments presented in support of dismissal are: (a) the Complaint improperly relies on joint pleading/there is no standalone cause of action for civil conspiracy; (b) the Complaint fails to adequately plead all necessary elements for a tortious interference with prospective economic advantage cause of action; and (c) the existence of an express contract precludes any unjust enrichment claim.

As these arguments are directed to the sufficiency of the Complaint, they should not be affected by Skyrise, Inc.’s withdrawal of its motion to dismiss nor the other developments in this action. Pilkington and Kim, therefore, maintain their Fed. R. Civ. P. 12(b)(6) motion to dismiss the sixth, ninth, and tenth causes of action.

Nonetheless, Skyrise’s withdrawal of its motion presents unusual circumstances as the papers containing the arguments Pilkington and Kim adopted are no longer before the Court. With the Court’s permission, Pilkington and Kim propose to redress this issue by submitting a supplemental brief pursuant to the following schedule: (1) Pilkington and Kim will submit a brief of no longer than ten pages (not including table of contents and table of authorities) by May 30, 2022; (2) Plaintiff may submit an opposition of the same length by no later than June 13, 2022; (3) there shall be no reply.

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Prior to making this request, counsel for Pilkington and Kim reached out to Plaintiff's counsel to obtain their consent. Plaintiff consented to Pilkington and Kim's request, including the proposed schedule set forth above.

We thank the Court for its consideration of our request. Should the Court have any further questions, please do not hesitate to contact us.

Respectfully submitted,

/s/ Anthony D. Green
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